

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA : :

v. : :

DAVID VEGA MOLINA : Cr. 99-295 (DRD)

MOTION TO DISMISS COUNT IV OF THE INDICTMENT

TO THE COURT:

DEFENDANT, David Vega Molina, hereby moves the Court for an Order dismissing Count IV of the Indictment on the grounds and for the reasons that follow:

1. Count IV of the Indictment charges a violation of 18 U.S.C. §1203(a), alleging conspiracy to take a foreign national hostage.
2. The conspiracy and hostage-taking are alleged to having taken place in 1995.
3. At the time of the events alleged in Court IV, the statute in question did not prohibit conspiracy to hold hostage a foreign national. The statute was not amended to include conspiracy to commit hostage taking until 1996.
4. The Court of Appeals determined in the appeal of the companion cases of this matter now before the Court on remand, that the convictions on Count IV of this indictment could not stand because they violated the Ex Post Facto Clause. United States v. David Vega Molina, et al., Court of Appeals Dockets 03-1625, 1649, 1650, and 1947, decided on May 19, 2005, at pages 14-16 of 29 ("B, The Ex Post Facto Claim").
5. In the case of the codefendants convicted on Count IV without

having raised, prior to appeal, the ex post facto error, the Court of Appeals remanded for resentencing as if they had been convicted of 18 U.S.C. §371. It did not explicitly decide the issue with respect to this defendant because certain evidentiary and constitutional errors required a new trial as to him.

6. David Vega Molina now moves, pretrial, to dismiss Count IV as the Constitution prohibits his trial on a charge that did not exist at the time of the acts alleged in the indictment. The decision with respect to this issue being the law of the case, this Count cannot stand.

WHEREFORE, it is respectfully requested that COUNT FOUR OF THE INDICTMENT BE DISMISSED WITH PREJUDICE.

CERTIFICATION

I hereby certify that on this date, the foregoing was electronically filed with the Clerk of the Court via CM/ECF system, which will cause a copy to be electronically served upon all counsel of record.

Respectfully submitted:

July 22, 2005

s/ Linda A. Backiel
USDC # 212110
Av. E. Pol 497 PMB 597
La Cumbre, San Juan
Puerto Rico 00926-5639
Tel and Fax: 787-751-4941
ollb@coqui.net